

Book: 26027 Page: 313 Inst#: 86121
Ctl#: 1302 Rec:9-08-2008 @ 1:36:41p
BRKL 337-347 SAINT PAUL STREET

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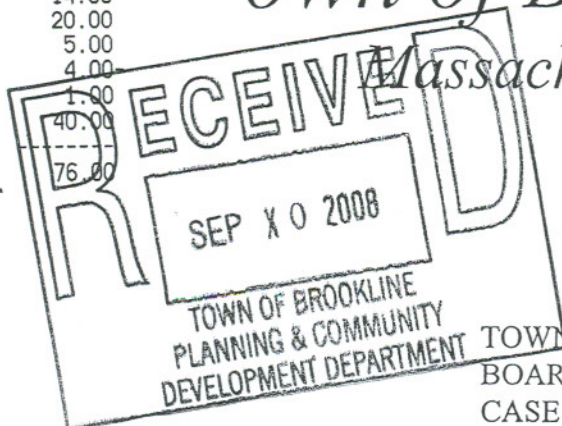
DECISION

10.00 rec fee	14.00
20.00 Surcharge	20.00
5.00 Tech. Surcharge	5.00
STATE PG ADJ	4.00
Postage/Handling Fee	1.00
State Fee \$40.00	40.00
	76.00

Total fees:

Harry Miller, Co-Chair
Bailey S. Silbert

Town of Brookline Massachusetts



Town Hall, 1st Floor
333 Washington Street
Brookline, MA 02445-6899
(617) 730-2210 Fax (617) 730-2248

Patrick J. Ward, Secretary

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. BOA 080019

Petitioner, Brookline Housing Authority applied to the Board of Appeals for zoning relief to convert the 84 unit apartment complex into 86 units, to construct four new additions at rear stair structures, to reconfigure the parking area to create additional compact vehicle parking spaces and to construct a wheelchair ramp at the north corner of the 347 St. Paul Street building. The application was denied by the Building Commissioner as the same violated the Town of Brookline Zoning By-Law. The applicant appealed to this Board.

On June 19, 2007 the Board of Appeals met and determined that the properties affected were those shown on a schedule in accordance with the certification prepared by the Assessors of the Town of Brookline and approved by the Board of Appeals and fixed July 17th, 2008 at 7:15 p.m. in the Conference Room on the second floor of the Main Library as the time and place of a hearing on the appeal. Notice of the hearing was mailed to the Petitioners, to the owners of the properties deemed by the Board to be affected as they appeared on the most recent local tax list, to the Planning Board and to all others required by law. Notice of the hearing was published June 26th and July 3rd, 2008 in the Brookline Tab, a newspaper published in Brookline. Copy of said notice is as follows:

TOWN OF BROOKLINE
MASSACHUSETTS
BOARD OF APPEALS
NOTICE OF HEARING

Pursuant to M.G.L., C.39, sections 23A & 23B, the Board of Appeals will conduct a public hearing to discuss the following case:

Petitioner: **BROOKLINE HOUSING AUTHORITY**
Location of Premises: **337-347 ST. PAUL ST. 7-33 EGMONT ST, AND 144-146 AMORY ST. BRKL**

Date of Hearing: **07/17/2008**

Time of Hearing: **07:15 p.m.**

Place of Hearing: **Conference Room 2nd Floor, Main Library**

A public hearing will be held for a special permit and/or variance from:

- 1) 5.05; Conversions; Special Permit Required
- 2.) 5.09.2.d; Design Review; Special Permit Required
- 3.) 5.50; Front Yard Requirements; Variance Required
- 4.) 6.02.2; Off-Street Parking Space Regulations; Special Permit Required
- 5.) 8.02.2; Alteration and Extension; Special Permit

Of the Zoning By-Law to

Construct renovations and modifications

Including but not limited to Architectural Access (AAB) requirements

Reconfiguration of existing dwelling unit, layouts to increase from 84 to 86 total dwelling unit; Mechanical System replacements; and exterior & site work modification as per plans at 347 St. Paul Street BRKL.

Said Premise located in a M-1-0 District.

Hearings, once opened, may be continued by the Chair to a date and time certain. No further notice will be mailed to abutters or advertised in the TAB. Questions regarding whether a hearing has been continued, or the date and time of any hearing may be directed to the Zoning Administrator at 617-734-2134 or check meeting calendar at: <http://calendars.town.brookline.ma.us/MasterTownCalendar/?FormID=158>.

The Town of Brookline does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services or activities. Individuals who need auxiliary aids for effective communication in programs and services of the Town of Brookline are invited to make their needs known to the ADA Coordinator, Stephen Bressler, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone: (617) 730-2330; TDD (617) 730-2327.

Enid Starr
Jesse Geller
Robert DeVries

At the time and place specified in the notice, a public hearing was held by this Board. Present at the hearing was Chair, Enid Starr and Board members Robert DeVries and Mark Allen. Attorney Jacob Walters of Goldenberg & Walters, 7 Harvard Street, Brookline, MA, presented the case before the board. The petitioner, was also represented by the Brian Cloonan, the Executive Director of the Housing Authority and Counsel for the Housing Authority Susan Cohen.

Attorney Walters described the project as a proposal to bring the property into compliance with the Americans with Disabilities Act by constructing a wheelchair access ramp at 347 St. Paul Street and to not only renovate the existing buildings but also to create 2 additional units by reconfiguring some 3 bedroom units and create additional one bedroom units to meet current demand. Mr. Walters stated that in addition the parking lot would be re-stripped to retain the existing number of parking spaces now at 72, which would be accomplished by creating additional compact spaces.

Attorney Walters said all the required relief could be granted by the issuance of three (3) special permits. The first Special Permit required is under Section 5.05, Conversions. Mr. Walters stated that the Board may waive dimensional requirements under Section 5.05 providing no previously existing non-conformity is being increased. In this instance, Mr. Walters indicated that the planned renovations would not increase any such preexisting non-

conformity. Mr. Walters added that under Section 5.09.2.d, design review is required due to the fact the property in question is greater than four(4) units. Mr. Walters pointed out that the Planning Board had no design objections to the reconfiguration of the building or the parking spaces. The final Special Permit needed is under Section 8.02.2 because the proposal constitutes the extension of an existing non-conformity. Attorney Walters stated that since the number of parking spaces was not changing relief under Section 6.02.2.d was not, in his opinion, necessary. Mr. Walters also commented that the applicant was exempt from front yard requirements under Section 5.05 due to the provisions of Massachusetts General Laws Chapter 40A, Section 3 which states in part: *"No dimensional lot requirement of a zoning ordinance or by-law, including but not limited to, set back, front yard, side yard, rear yard and open space shall apply to handicapped access ramps on private property used solely for the purpose of facilitating ingress or egress of a physically handicapped person..."*. Mr. Walters stated that the Planning Board suggested an alternate design for the proposed wheelchair ramp at the rear of the property, which would have less impact on the corner unit at 347 St. Paul Street as well as pedestrians and drivers passing the site. The applicant preferred the location of the ramp to be as submitted, due to the increased cost involved as well as the loss of 2 parking spaces which would require additional zoning relief. Mr. Walters concluded by stating that the Planning Board Staff and the Building Commissioner are in agreement with him that Chapter 40A Section 3 exempts the Brookline Housing Authority from relief for the handicapped access ramp and said ramp may be constructed as a matter of right.

The Chair then asked whether anyone wished to speak in favor or in opposition to the proposal. Ellen Franco of Amory Street stated she was neither in favor of nor opposed to the applicants proposal but wondered if any portion of the project would require construction along the Amory Street side of the buildings and also if additional demand for parking would result from the reconfiguration. The project architect Paul Johnson responded that no construction would take place on Amory Street and no additional parking demand was anticipated by the creation of two additional units.

The Chair then called upon the Planning Board for its report. Planner, Lara Curtis then stated that she was present on behalf of the Planning Board and said that the Planning Board was not opposed to the applicant's proposal but did favor the handicapped access ramp at the rear of the property. Ms. Curtis went on to say that the Planning Board considered the design of the building renovations and modifications and supported both. Ms. Curtis said the Planning Board also had no objections with the parking lot reconfiguration. Ms. Curtis concluded by saying that the Planning Board recommends approval of the proposal and the plans submitted by Powers & Company, Inc. prepared by Paul Johnson, Architect, subject to the following conditions:

- 1. Prior to issuance of a building permit, final elevations to the additions to the Egmont Street building, the modifications to the St. Paul Street building and the wheelchair ramp, indicating materials, shall be submitted to the Assistant Director for Regulatory Planning for review and approval.**
- 2. Prior to the issuance of a building permit, a final parking and landscape plan, indicating the revised parking layout and wheelchair ramp, shall be submitted to the Assistant Director for Regulatory Planning for review and approval.**
- 3. Prior to the issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) a final site plan, stamped and signed by a registered engineer or land surveyor; 2) final building elevations stamped and signed by a**

registered engineer or architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

The Chair called on Michael Shepard the Brookline Building Commissioner, representing the Building Department. Mr. Shepard described the project and said all the required relief could be granted by three special Permits. Mr. Shepard added that the applicant needed no relief for the handicapped access ramp and stated that if no other relief been required , the Building Department would have issued the building permit for the ramp without discussion. Mr. Shepard stated that the Building Department had no objections to the proposal, the relief required or the conditions recommended by the Planning Board.

The Board then began its deliberations. Members Allen and DeVries stated they agreed with the Planning Board that the handicapped access ramp was better sited at the rear of the St. Paul Street property. The Board continued the hearing for one week, until July 24th, in order to consult with Brookline Town Counsel concerning Massachusetts General Laws Chapter 40A, Seciton 3.

The meeting resumed on July 24th, at 7:00 p.m. at Hunneman Hall on the 2nd floor of the Main Library. Having the benefit of consultation with Town Counsel, the Board noted that in accord with Town Counsel's memorandum, the Town retained jurisdiction relative to design features of the handicapped ramp, but in accord with the provisions of M.G.L. Chapter 40A, Section 3, could not require the repositioning of the handicapped access ramp if doing so would result in higher cost and inconvenience to the applicant. The Board determined that repositioning the ramp would require additional zoning relief, resulting in delays and

additional costs and therefore concluded in this instance the Town By-Law was not applicable and the applicant could construct the wheelchair ramp in accord with its original plan. The Board then voted unanimously to grant Special Permits under Section 5.05, Section 5.09.2.d and Section 8.02.2 of the Zoning Bylaw. The Board makes the following findings pursuant to Section 9.05:

- a. The specific site is an appropriate location for such a use, structure, or condition.
- b. The use as developed will not adversely affect the neighborhood.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians.
- d. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.
- e. The development as proposed will not have a significant adverse effect on the supply of housing available for low and moderate income people.

Board member Robert DeVries stated for the record that he still favored the construction of the ramp at the rear of the premises, but understood pursuant to Chapter 40A, Section 3 of the General Laws, the applicant was exempt from relief.

Therefore, the board voted unanimously to grant all the Special Permit relief with the following conditions:

- 1 Prior to issuance of a building permit, final elevations to the additions to the Egmont Street building, the modifications to the St.Paul Street building and the wheelchair ramp, indicating materials, shall be submitted to the Assistant Director for Regulatory Planning for review and approval.**
- 2 Prior to the issuance of a building permit, a final parking and landscape plan, indicating the revised parking layout and wheelchair ramp, shall be submitted to the Assistant Director for Regulatory Planning for review and approval.**
- 3. Prior to the issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) a final site plan, stamped and signed by a registered engineer or architect; 2) final building elevations stamped and signed by a**

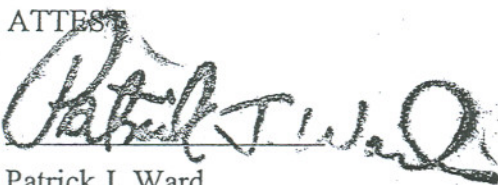
Registered engineer or architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Unanimous Decision of
The Board of Appeals

Filing Date:

A True Copy:

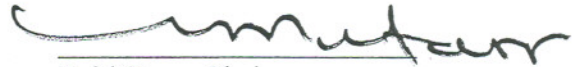
ATTES



Patrick J. Ward

Clerk

Board of Appeals



Enid Starr -Chair

Twenty days have elapsed and
no appeal has been filed.

A True Copy:

ATTEST:



Patrick J. Ward

Town Clerk

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